

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

May 12, 2004

In Reply Refer To:
6840 (WO-230) P

EMS TRANSMISSION 05/17/2004
Instruction Memorandum No. 2004-178
Expires: 09/30/2005

To: All Field and Washington Office Officials

From: Assistant Director, Renewable Resources and Planning

Subject: Training for Implementing the Joint Counterpart Endangered Species Act
Section 7 Consultation Regulations **DD: 06/30/2004**

Program Areas: Fish, Wildlife, Botany, Threatened and Endangered Species, Forestry, Rangeland, and Fire Management.

Purpose: The purpose of this Instruction Memorandum (IM) is to provide information and guidance to Field personnel on the training course for the joint counterpart Endangered Species Act (ESA) Section 7 consultation regulations.

Policy/Action: The Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively referred to as the Services) in cooperation with the Bureau of Land Management (BLM) and the Forest Service (FS) (collectively referred to as action agencies) developed a web-based training course for employees who will be implementing the joint counterpart regulations for consultation under Section 7 of the ESA. All biologists, ecologists, and botanists who conduct Section 7 effects analyses for proposed actions that are Fire Plan Projects and make determinations of effect under the ESA, and line officers who have decision authority for such projects (see Alternative Consultation Agreement (ACA) under "Resources") are required to be certified as having successfully completed this mandatory training.

The training course is available to the end users through the following internet address at their computer work station:

http://www.ntc.blm.gov/blm_1386/html/gateway/ie/launcher.htm?C_ID=&Mode=. The program must be launched through Internet Explorer as it will not function properly on Netscape. It is expected that the current field office staff will take the training course and certification exam by June 30, 2004, and training for new staff will continue to be available on the internet on an ongoing basis. Only after successfully completing the

training will staff be able to make Not Likely to Adversely Affect (NLAA) determinations under the counterpart regulations.

To Access the Training Course:

1. http://www.ntc.blm.gov/blm_1386/html/gateway/ie/launcher.htm?C_ID=&Mode=
2. If a second screen appears asking whether to close a window, enter yes.
3. If the display is too small, it can be enlarged by right clicking on an open area of the desktop screen. Click on “properties”, settings, and change the “screen resolution” to 800 x 600 pixels (return to default settings after completing the course).
4. To navigate the course follow the arrows, or click on “Go to Course Map”. Take advantage of the Glossary, Resources, and Help sections at the top of the screen. An audio feature is also available.

Examination:

After completing the training course, counterpart regulations users must then pass a certification exam. Click on “Certification Examination Link” on the last page of the course summary to access the exam. Fill in all required information fields to ensure the certification is properly registered with the agency.

Time Requirement:

The training course and exam should take about an hour if the user is already familiar with the counterpart regulations and the ACA. **The separate certification exam must be completed in a single session.**

Other Materials:

Please review the ACA to familiarize yourself with reporting requirements. Attached for your use is a table outlining the timeframes with important dates and materials that must be provided internally or to the Services so that action agency use of the counterpart regulations is consistent with the requirements identified in the counterpart regulations and in the ACA.

Time Frame: Current field office staff should be trained by June 30, 2004.

Budget Impact: Implementing this request has minimal budget implications. Implementation of the ACA is expected to increase consultation efficiency, enabling completion of additional priority tasks.

Background: The FWS and NMFS in cooperation with the BLM, FS, BIA, and NPS issued joint counterpart regulations for consultation under Section 7 of the ESA to streamline consultation on proposed projects that support the National Fire Plan (NFP). These counterpart regulations, authorized by 50 CFR 402.04, were published in the Federal Register on December 8, 2003, and complement the consultation process by providing an alternative process for completing Section 7 consultation for projects that

authorize, fund or carry out actions that support the NFP. The counterpart regulations allow the BLM to make “not likely to adversely affect” (NLAA) determinations for listed species or designated critical habitat without consulting with or obtaining written concurrence from the Services for proposed actions that support the NFP.

The BLM signed an ACA with FWS and NMFS on March 3, 2004. The ACA requires “a program for developing and maintaining the skills necessary within the agency to make NLAA determinations, including a jointly-developed training program based on the needs of the action agencies.” This training course satisfies that requirement of the ACA.

The ACA permits a BLM biologist, botanist or ecologist, who has completed the required training, to conduct Section 7 effects analyses and make determinations of effect for proposed actions that are NFP projects under the counterpart regulations. However, journey level biologists, botanists or ecologists are responsible for ensuring and documenting adequacy of the BE/BA with existing policy, and line officers are responsible for documenting compliance with the ESA and counterpart regulations.

Manual/Handbook Sections Affected: None.

Coordination: The training course was developed jointly with the FWS, NMFS, and FS.

Contacts: Peggy Olwell, Endangered Species Program Lead, (202) 452-7764, Karl Stein, Fisheries Biologist (530) 224-2156, and respective State Office contacts (see Attachment 2).

Signed by:
Edward Shepard
Assistant Director
Renewable Resources and Planning

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

2 Attachments

- 1- Timeframe Information (1 p)
- 2- Frequently Asked Questions and Contacts (6 pp)

**Timeframes for Counterpart Regulations Implementation Actions,
Consistent with the Regulations and the Forest Service and BLM
Alternative Consultation Agreements (ACA)**

Activity	Timeframe	Reference
1. Alternative Consultation Agreement (ACA) is signed	March 3, 2004	Regs., ACA
2. Training is delivered to end users	Within two months of ACA approval	Regs., ACA, E. 2.
3. Training is completed for some end users. With information from the training module, the action agency provides FWS and NMFS WO's with names.	May 2004 and thereafter	ACA, E. 7.
4. Training is completed for some end users. When done for any subunit, the subunit notifies FWS and NMFS of this, and starts using the regulations. 1/	May 2004 and thereafter	ACA, E. 8.
5. FS and BLM subunits maintain lists of projects for which Regulations were used, and submit lists to the respective FS Regional or BLM State Offices. (That info. is provided to FS and BLM Washington Offices, who provide it to FWS and NMFS Washington Offices.)	March 1, 2005, and annually thereafter	ACA, H.1.
6. Each subunit completes procedural checklist and submits it to the respective FS Regional or BLM State Offices. (That info. is provided to FS and BLM Wash. Offices, who provide it to FWS and NMFS Wash. Offices.)	March 1, 2005, and annually thereafter	ACA, I. 4.
7. Monitoring program is done by Monitoring Team. The team will determine sample size and select a random sample of projects. Those project BEs and BAs will be submitted to the team.	April 2005 and every 3 years thereafter	ACA, I. 5.
8. Monitoring team submits monitoring report to FWS and NMFS	45 days after completing evaluation	ACA, I. 9.
9. FR notice of monitoring report availability is posted by FWS or NMFS and report is posted on a website.	When monitoring report done	ACA, I. 10

1/ To send a formal letter(s) that a subunit has completed training and plans to implement the counterpart regulation, the NMFS email and address are (email is preferred):

NMFS.Nationalfireplan@noaa.gov

Laurie K. Allen, Director
Office of Protected Resources
NOAA Fisheries, SSMC3 - F/PR3
1315 East West Highway
Silver Spring, MD 20910

For the FWS, send the letter to the subunit's normal FWS Field Office Supervisor(s).

Attachment 1

Attachment 2-4

Counterpart Regulations

Frequently Asked Questions (FAQs) on Implementing the Counterpart Regulations for National Fire Plan Projects

References:

Counterpart Regulations, Federal Register, December 8, 2003

<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03-30393.pdf>

Alternative Consultation Agreements, March 3, 2004

http://www.blm.gov/nhp/spotlight/counterpart_regulations/BLM_ACA.pdf

<http://www.fs.fed.us/biology/tes/index.html>

1. Question: What is the purpose of the Counterpart Regulations?

Answer: The purpose is to enhance the efficiency and effectiveness of the consultation process under section 7 of the ESA for Fire Plan Projects (FPP).

2. Question: How do the Counterpart Regulations relate to the Healthy Forest Initiative and National Fire Plan (NFP)?

Answer: They were developed as part of the Initiative and are designed to help achieve implementation of the fuels reduction and ecosystem restoration goals of the NFP.

3. Question: Who has the responsibility for conducting and documenting NLAA determinations made under the counterpart regulations?

Answer: The action agency.

4. Question: Is the same level of protection for TEP species/Critical Habitat expected when implementing the counterpart regulations?

Answer: Yes, Action Agency effects analyses will be the same as is done now, and the level of protection is expected to be the same.

5. Question: If I make an NLAA determination for a National Fire Plan project, will I still need written concurrence from the FWS or NMFS?

Answer: No. Under the counterpart regulation, the action agency's responsibility to do effects analysis and potentially make and document a NLAA determination and compliance with the counterpart regulation now becomes the final consultation requirement under the ESA.

6. Question: What kinds of projects can I use the counterpart regulations on?

Answer: Projects that support the National Fire Plan.

7. Question: How do I determine whether a project supports the National Fire Plan?

Answer: Based on project objectives and the activities proposed, the line officer certifies whether the proposed action meets National Fire Plan goals (firefighting, post-fire

rehabilitation and restoration, hazardous fuel reduction, and community wildland fire assistance). These activities may include, but are not limited to: prescribed fire, mechanical fuels treatments, emergency stabilization, burned area rehabilitation, road maintenance and operations activities, ecosystem restoration, and culvert replacement activities.

8. Question: For which species can I use the counterpart regulations? What about designated critical habitat?

Answer: All ESA-listed and proposed species and designated critical habitat that are within the action area of a fire plan project (FPP).

9. Question: Have the counterpart regulations and alternative consultation agreement changed how I conduct and document a biological assessment or biological evaluation (BA/E)?

Answer: No. However, there is a greater responsibility to create and maintain the project record to demonstrate that you have used the best available scientific and commercial information.

10. Question: I hear that training is required to use the counterpart regulations. How do I obtain the required training?

Answer: Yes, training is required for action agency biologists and line officers who will be implementing the counterpart regulations. The training course and certification exam are available online at the following address:

http://www.ntc.blm.gov/blm_1386/html/gateway/ie/launcher.htm?C_ID=&Mode=

11. Question: If I'm a journey level biologist, botanist or ecologist who is responsible for ensuring and documenting BE/BA adequacy, do I need to take the training and be certified?

Answer: Yes. Under the counterpart regulations, the action agencies are assuming greater responsibility under the ESA, and must ensure adequate training of all individuals who use and support the regulations.

12. Question: As a line officer of a unit where we are implementing the counterpart regulations, why do I have to take the training?

Answer: In order to certify actions are consistent with the National Fire Plan and the ESA counterpart regulation, you must have an understanding of the regulations.

13. Question: Why are line officers required to certify that their projects are National Fire Plan projects?

Answer: Line officers are ultimately responsible for ensuring actions comply with the requirements of the counterpart regulations, which includes documenting that the project is within the scope of the National Fire Plan.

14. Question: How do I determine what the environmental baseline is for a species and what the status of the species is? Isn't that FWS's and or NMFS's job?

Answer: The action agencies continue to have the responsibility to know the action area environmental baseline and status of the species. Further information can be found in the section 7 consultation handbook and section 7 regulations.

15. Question: If I have a project that is LAA for a listed or proposed species or designated critical habitat, can I use the counterpart regulations?

Answer: No.

16. Question: What do I do if I have an NLAA for three species and an LAA for a fourth species in my national fire plan project area?

Answer: The counterpart regulations apply to the first three species while formal consultation must be initiated on the project for the fourth species.

17. Question: My project involves the commercial harvest of about 500 acres of forest, and a component of the project includes fuels reduction activities on about 200 acres. The NEPA document describes it as one project. Can I use the counterpart regulations to satisfy section 7 consultation requirements on both activities?

Answer: If each project activity supports the National Fire Plan, you can use the counterpart regulations. If they do not, only the activities that support the National Fire Plan can be assessed under the counterpart regulations, as long as the activities are not interrelated and interdependent.

18. Question: After I have completed my BA/BE and a contract has been let, what do I do if I learn about new information relevant to the project and its effect to the listed species?

Answer: As before, you must re-analyze the project to determine whether or not the effects determination remains valid.

19. Question: In the Pacific Northwest, will our level 1 teams still be used for evaluating NLAA determinations for Fire Plan Projects (FPP)?

Answer: The use of level 1 teams for NLAA determinations on FPPs is at the discretion of the action agency. If the counterpart regulations are used, the final determination lies with the action agency.

20. Question: Can I share my draft BA/BE with FWS or NMFS to gain their input?

Answer: Yes, the ACA allows the action agency to request assistance relevant to the effects analysis.

21. Question: Can I send my final BE/BA to the FWS or NMFS, for their records?

Answer: It is at the discretion of the action agency.

22. Question: Under the counterpart regulations, can a subunit continue to use the streamlining procedures and associated tools for FPPs?

Answer: Yes, if the action agency finds them useful and appropriate.

23. Question: Do I have to keep track of every project I use the counterpart regulations on?

Answer: Yes. Completing Appendix 1 of the Alternative Consultation Agreement will allow you and your state/regional office to track NFP projects that used the counterpart regulations.

24. Question: I notice that there is going to be monitoring and evaluations of field unit performance in implementing the counterpart regulations. Who is going to do the evaluations, how often and for what purpose?

Answer: At the end of the first year and every three years thereafter, the FWS and NMFS will lead a national interagency monitoring team. The purpose of the monitoring program is to evaluate whether the action agency is making NLAA determinations on FPPs consistent with the best available scientific and commercial information, and in compliance with the ESA and the section 7 regulations.

25. Question: At the end of one year, how will I know if my project is selected for the National Monitoring and Program Evaluation? And, if so, what will I need to provide?

Answer: The National Interagency Monitoring Team will notify your subunit. If one of projects is selected, you will need to provide the Team with the project BE or BA.

26. Question: Given that my field unit has a limited budget, how do I maintain access to the best available scientific and commercial information?

Answer: Affordable access to information is available through the internet (such as USDA Digitop, FWS/NMFS T&E species sites, etc.), agency and other libraries, personal contacts, and species experts. Contact your state/regional TES program leaders for more information.

27. Question: If a non-journey level biologist who has completed counterpart regulations training conducts and documents the BA, what role, if any, does a "journey level biologist" have?

Answer: The journey level biologist needs to ensure the adequacy of the BA, and their name is provided on the ACA Appendix 1 form.

28. Question: My journey level botanist isn't interested in using counterpart regulations. How do I get my potential NLAA FPP evaluated or reviewed?

Answer: It is up to the line officer to ensure appropriate skills are available and used if he/she chooses to use the counterpart regulations.

29. Question: The FWS has listed a new species. It occurs in my FPP project area and work activity is scheduled next month. What do I do?

Answer: You must re-analyze the project to determine whether or not there are any effects, whether or not a NLAA determination is appropriate and whether or not to utilize the counterpart regulations.

30. Question: What is the “subunit”, the administrative office that needs to report to the FWS and NMFS that it has completed training, and intends to implement the Counterpart Regulations?

Answer: For the BLM, subunit refers to the Field Office or the District office, and for the Forest Service it refers to the Ranger District or Forest Supervisor’s office.

31. Question: What is the role of Regional Contacts?

Answer: Regional Contacts serve as information resources to answer questions arising from subunits with their state or region, and to ensure consistency in analysis and reporting of Fire Plan Projects. Those contacts are given in the following table.

**Agency Counterpart Regulation/Alternative Consultation Agreement
Implementation Contacts:**

United States Fish and Wildlife Service		
R1-WA/OR	Kristi Young	503-231-6845
R1-CA/NV	Vicki Campbell	916-414-6464
R2	Delphina Montano	505-248-6401
R3	Jennifer Szymanski	612-713-5342
R4	Joe Johnston	404-679-4155
R5	Glenn Smith	413-253-8627
R6	Bridgett Fahey	303-236-4258
R6	Ari Cornman	303-236-4254
National	Rick Sayers	703-358-2106
NOAA Fisheries		
NWR	Charley Rains	208-378-5686
NWR	Steve Keller	360-534-9309
SWR	Chuck Glasgow	707-825-5170
SWR	Garwin Yip	707-825-5166
NER	Pasquale Scida	978-281-9208
SER	Stephania Bolden	727-570-5312

National	Ann Garrett	301-713-1401
USDA Forest Service		
R1	Tom Wittinger	406-329-3677
R2	Nancy Warren	303-275-5064
R3	Wally Murphy	505-842-3195
R4	Lee Jacobsen	801-625-5664
R5	Diane Macfarlane	707-562-8931
R6	Sarah Madsen	503-808-2673
R8	George Bukenhofer	404-347-4085
R9	Steve Mighton	414-297-3612
R10	Ellen Campbell	907-586-7919
National	Marc Bosch	202-205-1220
		Attachment 2-5

National	David Pivorunas	202-205-1213
Bureau of Land Management		
Alaska	John Payne	907-271-3431
Arizona	Ted Cordery	602-417-9242
California	James Newman	916-978-4635
Colorado	Wes Anderson	303-239-3608
E. States	Geoff Walsh	703-440-1668
Idaho	Tim Burton	208-373-3819
Montana	Gayle Sitter	406-896-5293
New Mexico	Mike Howard	505-525-4348
New Mexico	Paul Sawyer	505-438-7516
Nevada	Randy McNatt	775-861-6473
Nevada	Erick Campbell	775-861-6471
Oregon	Barb Hill	503-808-6052
Oregon	Joe Moreau	503-808-6418
Utah	Ron Bolander	801-539-4065
Wyoming	Jeff Carroll	307-775-6090
National	Peggy Olwell	202-452-7764
National Park Service		
National	Bruce Rittenhouse	970-225-3591
National	Peter Dratch	970-225-3596
Bureau of Indian Affairs		
National	John Vitello	202-208-5968

Each subunit that intends to implement the counterpart regulations must send a formal letter(s) to the FWS and/or the NMFS that has completed training. For the FWS, send the letter to the subunit's normal FWS Field Office Supervisor(s). For NMFS, use this address in the letter, and email it to the address given:

Laurie K. Allen, Director
Office of Protected Resources
NOAA Fisheries, SSMC3 - F/PR3
1315 East West Highway
Silver Spring, MD 20910

NMFS.nationalfireplan@noaa.gov